

REMARKS

Claims 1 - 18 are pending, with claims 1, 2 and 8 - 16 having been withdrawn from consideration as being drawn to a non-elected invention and with claims 17 and 18 having been newly added.

Claims 3 - 7 stand rejected under 35 U.S.C. 102(e) as being anticipated by Tokuda et al. (2004/0097791). Reconsideration of this rejection is respectfully requested. Enclosed herewith is a verified translation of Applicant's priority document (JP 2003-094028) that was filed in Japan on March 31, 2003. As Applicant previously claimed the right of priority based on the filing of JP 2003-094028, and as Applicant has now provided a verified translation of said priority document, it is requested that the Examiner withdraw the rejection, since the publication of Tokuda's patent application 2004/0097791 has now been properly antedated.

Claims 3 - 7 stand rejected under 35 U.S.C. 102(e) as being anticipated by Furnish et al. (2004/0092829). Reconsideration of this rejection is respectfully requested. With regard to the rejection of claims 3 and 6, the device of Furnish et al. is an apparatus wherein photons within a 'field of view' (i.e., more accurately, an acceptance zone) are spectrally analyzed for the detection of plaques within arteries. There is no suggestion in Furnish et al. to use the collected photons to form any "image" or "view" information. In addition (with reference to Fig. 4 of Furnish et al.), it should be noted that only a portion of the light that illuminates the arterial wall 14 is scattered by the arterial wall 14. Thus, as shown in Fig. 4 of Furnish et al., some of the illumination light directly illuminates an object within the artery and becomes what is referred to in Furnish et al. as "re-entrant light" that is collected by the collection fiber 20. Thus, in Furnish et al., the "observation field of view" overlaps the illumination field. On the other hand, claim 3 distinguishes over Furnish et al. by the recitation as contained in its last four lines. More specifically, in Furnish et al. there is: (1) a lack of "an observation field of view and an in-focus position" (as recited in lines 5 - 6 of claim 3), since Furnish et al. merely collects the light; and (2) the "observation field of view of the objective optical system" does overlap the illumination field and thus the limitation as contained in the last two lines of claim 3 is not satisfied. As claim 6 depends from claim 3, it distinguishes over Furnish et al. at least for the two reasons that claim

3 distinguishes over Furnish et al. With regard to the rejection of claims 4 and 7, the Examiner states in paragraph [08a] of the Office Action that “the absolute value of the image scale factor is larger than 1, see Fig. 22”. However, the Furnish et al. specification is entirely silent regarding **there being any image formed** by the objective lens 130 shown in Fig. 22. Nor is there any mention of an optical pickup in Furnish et al. Thus, Furnish et al. does not disclose or suggest to one of ordinary skill in the art that an image of an observation field be formed by the objective lens on an image pickup, **or** that the image scale factor be as is claimed in claim 4. At page 6, lines 11 and 12 of Applicant’s specification, the “image scale factor of the objective optical system” is defined as “the height of the image formed on the image pickup element divided by the actual height of the object”. As Furnish et al. fails to disclose that an image is formed and also fails to disclose forming such an image on an image pickup surface, it is clear that Furnish et al. fails to meet the limitation regarding “image scale factor” as contained in claim 4. Moreover, as known to those of ordinary skill in optics, when an objective lens that forms an image on an image pickup has an image scale factor larger than 1, the distance of the object from the objective lens must be less than the distance from the objective lens to the image pickup. Because the object in Furnish et al. is rather far from the objective lens and because there does not appear to be **any** image that is formed in Furnish et al., **nor** is there an optical pickup in Furnish et al., Furnish et al. certainly does **not** meet the limitation of claim 4 concerning “the absolute value of the image scale factor is larger than 1”. As claim 7 is dependent from claim 4, claim 7 distinguishes over Furnish et al. at least for the reasons, discussed above, that claim 4 distinguishes over Furnish et al. With regard to the rejection of claim 5, it should be noted (with reference to Fig. 4 of Furnish et al.), that only a portion of the light that is incident on the arterial wall 14 is scattered by the arterial wall so as to “illuminate” the arterial wall. Thus, as shown in Fig. 4 of Furnish et al., some of the illumination light is scattered by an object within the artery and becomes what is termed in Furnish et al. as “re-entrant light” that is collected by the collection fiber 20. On the other hand, claim 5 distinguishes over Furnish et al. by its recitation “that does not directly illuminate an observation field illuminates an area of tissue outside the observation field of view”. Thus, claim 5 is not anticipated by Furnish et al., since

light that directly illuminates the object (e.g., the light that is not scattered by the arterial wall and that is first scattered by an object within the artery) is within the field of view of the observation field.

New claims 17 and 18 have been added to provide greater claim scope gradation. It is respectfully requested that claims 17 and 18 be examined.

Having now antedated the published patent application of Tokuda et al. (2004/0097791) by providing a verified translation of Applicant's priority document, and having pointed out the manner in which claims 3 - 7 patentably distinguish over Furnish et al., it is respectfully requested that claims 3 - 7 be re-examined and that new claims 17 and 18 be examined. Moreover, unless more pertinent prior art is found, an early Notice of Allowability is earnestly solicited.

Attached hereto is a check in the amount of \$520.00 to cover the fee for a one-month extension of time in which to reply to the Office Action and the fee for two added independent claims (in excess of three). If any additional fee is required, please charge it to the undersigned's Deposit Account No. 01-2509.

Respectfully submitted,

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Attachments: Verified Translation of JP- 2003-094028  
Check in the amount of \$520.00